IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

Bail Appl..No. 6606 of 2007()

CRIME NO.674/2007 OF KASARGOD POLICE STATION

: PETITIONERS/ACCUSED NOS.1 & 2:

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1. JAYAN, S/O. RAMA BHANDARY,
   NELLIKUNNU, KASARGOD.

2. MANOHARAN, S/O. KELU NAIR,
   NELLIKUNNU, KASARGOD.

BY ADV. SRI.SOJAN MICHEAL

RESPONDENTS: COMPLAINANT:

THE STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.P.RAVINDRA BABU

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13/11/2007, ALONG WITH BA NO. 6607 OF 2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.Nos.6606 & 6607 of 2007

Dated this the 13th day of November, 2007

ORDER

These applications are for anticipatory bail. Petitioners apprehend arrest in 2 different crimes registered as Crime Nos.673 and 674 of 2007 of Kasargode Police Station. It is submitted that as the incidents in the 2 cases is one and the same, a consolidated common investigation is being conducted into these crimes. In Crime 673 of 2007, the crime was registered for offences punishable, inter alia, under Sections 353 and 333 r/w 149 I.P.C. In crime No.674 of 2007, the crime was registered under Section 308 I.P.C. Accused 1 and 2 in Crime 674 of 2007 are accused 2 and 5 in Crime 673 of 2007. The crux of the allegations is that the petitioners along with others attacked one Ramesan and police officials who were available outside the police station at the relevant time. The alleged attack was with cricket bats. Investigation is in progress. The petitioners apprehend imminent arrest. 2 other accused - accused 4 and 6 in Crime 673 of 2007 have been arrested and enlarged on bail, it is submitted.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. The police in collusion with the defacto complainant in Crime 674 of 2007 is only attempting to vex

and harass the petitioners. Allegation under Section 308 I.P.C has been unnecessarily included. Even going by the averments in the petition, there was no attempt to deter any public servant from the discharge of his official duties. The injury suffered is insignificant. The real incident did not take place as alleged by the prosecution at all. The petitioners are really the victims of aggression and not the aggressors. The petitioners apprehend physical harm if they were arrested and kept in custody of the police. They are wiling to abide by any conditions. They may be granted anticipatory bail, it is prayed.

3. The learned Public Prosecutor opposes the application. It is submitted that the allegations are true and correct. The allegation under Section 308 I.P.C has been included for valid reasons. But for the fact that the attack was warded off, the injury would have been suffered on the head of the defacto complainant in Crime 674 of 2007. The police officials were deterred in the discharge of their official duty. In these circumstances, at any rate, the discretion under Section 438 Cr.P.C may not be invoked, submits the learned Public Prosecutor .

4. At this early stage of investigation, I shall scrupulously avoid any detailed discussion about the acceptability of the allegations or the credibility of the data collected. Suffice it to say that on an anxious consideration of all the relevant inputs, I am satisfied that the

petitioners can be granted anticipatory bail notwithstanding the opposition of the learned Public Prosecutor .

5. In the result, these Bail Applications are, allowed. The following directions are issued under Section 438 Cr.P.C.

i) The petitioners shall appear before the learned Magistrate at 11 a.m on 20.11.2007. They shall be enlarged on regular bail on their executing bonds for Rs.25,000/- (Rupees Twenty Five thousand only) in each case with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate;

ii) The petitioners shall make themselves available for interrogation before the Investigating Officer between 10 a.m and 3 p.m on 21.11.2007 and 22.11.07 and thereafter between 10 a.m and 12 noon on all Mondays and Fridays for a period of one month. Subsequently the petitioners shall make themselves available for interrogation before the Investigating Officer as and when directed by the Investigating Officer in writing to do so;

iii) If the petitioners do not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioners and deal with them in accordance with law as if those directions were not issued at all;

iv) If the petitioners were arrested prior to their surrender on 20.11.07 as directed in clause (1) above, they shall be released from custody on their executing a bond for Rs.25,000/- (Rupees Twenty Five thousand only) each without any sureties undertaking to appear before the learned Magistrate on 20.11.07.

(R.BASANT, JUDGE)

rtr/-